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FILED

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SECRETARY, BOARD OF
OIL, GAS & MINING

Attorneys for the Division of Oil, Gas and Mining

**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

In the matter of the Request for Agency Action
by Uintah County for release from a written
contract provided as surety for the Uintah
County Asphalt Mine, M/0047/0022, Uintah
County, Utah.

REQUEST FOR AGENCY ACTION

Docket No. 2015-010

Cause No. M/047/0022

Uintah County, (**County**) and the Division of Oil, Gas and Mining (**Division**) file this Request for Agency Action for an order of the Board of Oil, Gas and Mining ("**Board**") releasing Uintah County from its obligations under the written contract provided as surety for the Uintah County Asphalt Mine M/0047/0022 (County Mine), in Uintah County, State of Utah.

The County has entered into an agreement with Tar Sands Holding II (TSH II) to assign and transfer the Notice of Intention (NOI, or permit) for the County Mine to TSH II. The

agreement for the transfer of the permit provides that TSH II will assume responsibility for the reclamation liability for the mine. The reclamation surety provided by the County is in the form of a written agreement approved by the Board known as a Board Contract. The County desires to be released from its obligations under the Board Contract. The Board has the “sole authority over the release, partial release, or adjustment of surety amount” for a such agreements; see Utah Code §40-8-14(3) and Utah Admin Code R647-4-113.7. Accordingly, the County must file this request with the Board for release of its surety obligations.

JURISDICTION

1. The Division brings this matter to the Board under the Utah Mined Land Reclamation Act (the “Act”), Utah Code Ann §§ 40-8-1 to -23 (West 2013). The Act gives the Board and Division “jurisdiction and authority over all persons and property, both public and private, necessary to enforce this chapter.” Id. § 40-8-5(1)(a). The Act, also, gives the Board the power and the duty to hold hearings and issue orders based on those hearings and “[t]o do all other things and take such other actions within the purposes of this act as may be necessary to enforce its provisions.” Id. § 40-8-6(2), (4).

2. This proceeding is to be conducted formally according to the provisions of the Board’s administrative rules found in Utah Administrative Code Rule R641 and sections 63G-4-204 through 63G-4-209 of the Utah Code.

3. Pursuant to the Rules of the Board, unless otherwise ordered, this matter will be heard at the regularly scheduled a Board Hearing scheduled for February 25, 201t in the auditorium of the Department of Natural Resources building at 1594 West North Temple, Salt Lake City, Utah.

The hearing is scheduled to begin at 9:00 A.M. to hear pending requests and notices of agency action.

4. This proceeding may affect property interests of the permitted operators, the mineral owners, and the surface landowners and surety, and named individuals and each are “respondents” as defined under Utah Administrative Code Rule R641-100-200 and therefore, must “file and serve a written response signed by the respondent or his/her representative within twenty (20) days of the mailing date” of this Notice of Agency Action. Utah Admin. Code R. R641-104-141 (2012). Under administrative rules R641-104-131.600 and R641-104-151, a party who fails to file a response or attend or participate in the hearing may be held in default.

FACTUAL ALLEGATIONS

5. The Uintah County Asphalt Mine has a long and somewhat complicated history. In its first application for a Notice of Intention for mining operations filed on May 2, 1988, Uintah County stated that the mine had been in operation for more than 50 years previous that date primarily as a source of asphalt for roads. The mine property was acquired by the county in a tax sale and thereafter operated by it. After the enactment of the Mined land Reclamation Act in 1975, Uintah County questioned whether a mine run by a county on ‘county owned’ land required a permit and whether it should be required to post a reclamation surety. Eventually the County agreed to obtain a permit, and submitted its NOI, but requested that a surety not be required. In July, 1989 the Board Chair told the County that a reclamation contract would be sufficient form of surety, however the County did not submit a signed reclamation contract.

6. In December 1993 the estimate of the reclamation costs was increased from \$56,000 to \$96,500.00 based on amendments and cost escalations to 1998 dollars. At this time the question

of whether a surety was required for the mine was raised again. This question was presented to the Board at the May 1994 hearing and the Board requested an opinion from the Attorney General. That opinion concluded that the Board did have authority to regulate mining activities by public entities and that the Board could therefore require a bond from the County. However, the decision said the decision was left to the discretion of the Board.

7. In September, 1996 the NOI was again amended and the County again requested that no surety be required. This time a hearing was held before the Board on October, 23 1996. The Board reviewed the detailed analysis of the costs of reclamation and the financial capacity of the County, and determined that a reclamation contract signed and approved by the County and the Board could serve as the surety under the statutory provision allowing for written agreements to be accepted as a form of surety. The amount was set at \$146,400, escalated to 2001 costs.

8. In 2003 the County entered into an agreement with a private company called Crown Resources to operate on its lands. The Division agreed to reduce the County's reclamation liability to reflect a reduction in the amount of disturbed area that the County was required to reclaim under its agreement because of Crown Resources agreement to reclaim those lands. The Board approved a reduced surety amount of \$115,900 (costs escalated to 2009).

9. In 2006 Crown Asphalt Ridge LLC filed a Notice of Intention M/047/032 for large mining operation on 43 acres of land immediately south of the County Mine. This mine was intended to mine the same geologic formation as the County Mine but in conjunction with a more complicated method of recovery that allowed for recovery of oil.

10. The surety posted for the Crown Asphalt Ridge mine was the form of a Certificate of Deposit (CD) in an amount of \$275,000. This amount was increased in 2009 to \$302,000 escalated to 2014 costs.
11. Between 2006 and 2011, mining operations by Crown Asphalt (and others under their authority) were allowed by the County to proceed on lands within the County permit. Those involved in the mining operations during this period included Uintah Basin Resources, LLC, (UBR), who acquired the real property, and Korea Technology Industry America, Inc, (KTIA), an investor in the technology and mining operations.
12. This joint venture was not successful and in August 2011 a Chapter 11 Bankruptcy was filed by KTIA.
13. In November 2011 the bankruptcy court approved an auction sale, and at that sale an entity composed of debtors of the bankrupt, organized as Tar Sands Holding II, LLC purchased the real property, the on-site equipment, and the Crown Asphalt permit M/047/032.
14. TSH II intentions in buying these assets was to find a buyer that would operate mining operations and in accordance with this goal TSH II submitted a revised NOI for the Crown Asphalt permit and has been in negotiations with the County and the Division to resolve reclamation liability for the County permit.
15. On October 22, 2014 the Division issued a directive to TSH II requiring it to increase the current amount of its surety for the Crown Asphalt permit from \$381,000 to \$678,000, and requiring it to amend their NOI to include lands within the County Permit that it will require for future mining or reclaim those areas.

16. On November 21, 2014 TSH II advised the Division that it had a prospective purchaser and was interested in concluding an agreement for bonding of the County permit. That offer to acquire the assets of TSH II and operate the mining operations has moved forward and is currently scheduled to close on about February 1, 2015.

17. The Division, the County, and TSH II have reached a separate agreement resolving liability for the lands within the County permit that will allow TSH II to operate the two NOIs and apply for their consolidation as one permit.

18. Under the agreement between the County and TSH II, TSH II has agreed to post a bond for the amount of the reclamation costs for the County permit in the sum of \$115,900 and assume responsibility for the reclamation liability.

19. In addition to the obligations to the County, TSH II has agreed and as a condition to the approval of the transfer of the permit will required full bonding of the Crown Asphalt permit which will require a final bond increase of \$188,000.00. This payment is required by the date for the conclusion of the sale of the membership in TSH II which is February 28, 2015.

REQUEST FOR ACTION

The Division asks the Board to:

A. Provide a full and complete Release of Uintah County from its obligations as guarantor of requirements set forth in the Reclamation Contract approved as the surety for the County Asphalt Mine (M/047/022) conditional upon confirmation that:


(1) an adequate replacement surety in the amount of \$115,900.00 for the County Asphalt Mine Permit (M/047/022) has been provided by TSH II and accepted by the Division; and

(2) the full surety for the Crown Asphalt Permit M/047/032 as approved in the amount of \$683,000.00 has been provided by TSH II and accepted by the Division.


B. Such other just and equitable relief as may be just and reasonable based on the evidence and arguments provided at the hearing.

RESPECTFULLY SUBMITTED this 12th day of January, 2014.

Uintah County


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CERTIFICATE OF MAILING

I certify that I caused a true and correct copy of the above Request for Agency Action to be mailed the 23rd day of January, 2015, to:

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